



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/647,819
Filed : August 25, 2003

Patent No. : 6,279,298
Granted : August 28, 2001
Patentees : Toby R. Thomas
Samuel D. Aversa
John D. Athans
Filed : August 8, 2002
Title : Fill-Through-The-Top Package And Method
And Apparatus For Making The Same

TC/A.U. : 3721
Examiner : John Sipos

Docket No. : 47097-00057USPR
Customer No. : 30223

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on August 2, 2005.

Signature: Carlo Aversa

37 C.F.R. § 1.131 DECLARATION

Dear Sir:

We, Toby R. Thomas, Samuel D. Aversa, and John D. Athans, named co-inventors of pending U.S. Patent Application No. 10/647,819, entitled "Fill-Through-The-Top Package And Method And Apparatus For Making The Same" hereby declare:

1. We are co-inventors named on the United States Patent Application No. 10/647,819 ("the '819 application"). The '819 application is a reissue of U.S. Patent No. 6,279,298, which is a divisional of U.S. Patent No. 6,071,011, filed August 12, 1999.

2. The '819 application generally pertains to a fill-through-the-top package and method and apparatus for making the same. We invented the subject matter of the claims of the '819 application prior to the filing date of U.S. Patent No. 6,138,439 ("the McMahon '439 patent"), which is May 21, 1999.

3. As detailed below, the subject matter of the '819 application was conceived at least as early as 1998 and thus prior to May 21, 1999, the filing date of the McMahon '439 patent.

4. Exhibit A is a true photocopy of a design drawing that was prepared prior to May 21, 1999. The drawing shows the profile of a top-fill package and includes descriptions of the various features of the package according to the embodiments of the claimed invention.

5. Exhibit B is a true copy of an e-mail prepared by John Athans, a co-inventor of the present invention, prior to May 21, 1999. The e-mail provides evidence of the internal evaluation of the top-fill tamper evident package technology that is the subject of the '819 patent application.

6. In view of Exhibits A and B, the subject matter of the '819 application was conceived prior to May 21, 1999, the filing date of the McMahon '439 patent. Additionally, after the development of Exhibit A and Exhibit B, we continued to diligently investigate and refine the technology that is the subject matter of the '819 application at least until August 12, 1999, the effective filing date of the '819 application.

7. Between the filing date of the McMahon '439 patent and the priority date of the '819 application, we continued with the internal commercial development of the claimed invention of the '819 application. Exhibit C is a true photocopy of laboratory notebook pages prepared on June 14, 1999, June 15, 1999, and June 18, 1999 by Toby Thomas, a co-inventor of

the present application. The pages include descriptions and drawings of the embodiments of the claimed invention. Moreover, many of the drawings of Exhibit C closely resemble the drawings of the '819 application.

8. Exhibit D is a true copy of an e-mail dated July 9, 1999 drafted by John Athans, a co-inventor of the present application. The e-mail provides evidence of some of the testing of the top-fill tamper evident package technology performed pursuant to a confidentiality agreement with a third-party perspective customer. It also provides evidence that the packages were reduced to practice no later than June 1999 because they were being sent to the third party-prospective customer.

9. Exhibit E is a true copy of another e-mail dated July 14, 1999 drafted by John Athans. The e-mail provides evidence of working with the prospective customer of Exhibit D to commercialize the process of the '819 application. The name of the third-party prospective customer has been redacted.

10. In view of Exhibits C, D, and E, the subject matter of the '819 application was diligently investigated and the technology was further refined between May 21, 1999 (the date of the McMahon '439 patent) and August 12, 1999, the effective filing date of the '819 application.

11. In addition to our work on the technology, between the filing date of the McMahon '439 patent and the priority date of the '819 application, we also continued to diligently work with patent counsel on developing the patent application that resulted in the '819 application.

12. We hereby declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and, further, that these statements and the like so made are punishable by fine or imprisonment, or both, under

Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the '819 application or any patent issued thereon.

Dated: 7/5/2005

Toby R. Thomas
Toby R. Thomas

Samuel D. Aversa

John D. Athans

Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the '819 application or any patent issued thereon.

Dated: _____

Toby R. Thomas

7/25/05

Samuel D. Aversa
Samuel D. Aversa

John D. Athans

Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the '819 application or any patent issued thereon.

Dated: _____

Toby R. Thomas

Samuel D. Aversa

July 13, 2005

John D. Athans
John D. Athans

From: John Athans on 07/14/1999 08:38 AM EDT

Sent by: John Athens

To: David Furstoss/LAK/Tenneco_Packaging, Larry Rebodos/ROC/Tenneco_Packaging
cc: Toby R. Thomas/CAN/Tenneco_Packaging, Tim Pistner/CAN/Tenneco_Packaging, Sam D.
Aversa/CAN/Tenneco_Packaging
Subject: RE: Slide-Rite Samples

Dave / Larry,

Do we have commitment from : for additional SKU's based on the Top Fill Tamper Evident
technology?

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